

BEFORE THE FEDERAL ELECTION COMMISSION

2014 MAY -6 PM 3: 53

In the Matter of)
)
MUR 6614)
Imus for Congress)
and Chad Hanely as treasurer)
Gregg Imus)

DISMISSAL AND
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

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GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act or Commission regulations has occurred, to make no reason to believe findings.¹

The Office of General Counsel has scored MUR 6614 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, the Office of General Counsel recommends that the Commission dismiss this matter as to Imus for Congress and Chad Hanely in his official capacity as treasurer (collectively the "Committee"), and remind the Committee of the requirements of 2 U.S.C.

¹ The EPS rating information is as follows: Complaint Filed: July 24, 2012. Response from Imus for Congress Filed: August 22, 2012. Response from Gregg Imus Filed: September 13, 2012.

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1 § 434(a), which pertain to the filing of financial disclosure reports. The Office of General Counsel
2 also recommends that the Commission find no reason to believe that Gregg Imus violated the Act or
3 Commission regulations.

4 Robert A. Roberts ("Roberts"), on behalf of the East Valley Taxpayers Coalition, alleges
5 that Imus² and his Committee failed to file a 2012 12 Day Pre-Primary Report ("Pre-Primary
6 Report" or "Report") covering the time period from April 1, 2012 through May 16, 2012. Compl. at
7 1.³ Roberts alleges that the Committee's failure to file its Pre-Primary Report concealed from the
8 public both the "true source" of the contributions and "expenditures since April 1, 2012" by the
9 Committee. *Id.* at 2.

10 John Fugatt ("Fugatt")⁴ filed a response on behalf of the Committee in which he
11 acknowledges that the Committee had failed to timely file its Pre-Primary Report. Committee
12 Response at 1. According to Fugatt, this resulted from the fact that "the necessary support for
13 expenditures made by the campaign were still being gathered" and sent to him, after which Fugatt
14 had to obtain additional information. *Id.* Fugatt asserts that the Committee "filed [the Report] as
15 soon as the information was complete." *Id.*, see also Committee 12-Day Pre-Primary Report filed
16 on July 16, 2012. Fugatt expresses regret for the delayed filing, noting that the campaign was
17 staffed with "a small group of grassroots activists and unpaid volunteers." *Id.* He also states that
18 the Committee is "up to date" in terms of filing its reports and pledges to file all subsequent reports

² Imus, a candidate in California's June 5, 2012 primary election, sought to represent California's 8th congressional district. The Committee is his principal campaign committee.

³ Although the Reports Analysis Division ("RAD") notified the Committee on May 25, 2012 that its Pre-Primary Report had not been filed, Roberts states that the Committee had not filed the Report "to date." *Id.* at 1; see also Compl., Attach. A (copy of RAD's May 25, 2012 Notice to the Committee).

⁴ It appears that Fugatt, rather than official treasurer Chad Hanely, may be acting as the Committee's treasurer. See Miscellaneous Report filed by Imus on May 2, 2013 stating that Fugatt had become the Committee's treasurer "during the [2012] campaign." Despite several notifications from RAD, the Committee failed to properly amend its Statement of Organization to reflect that Fugatt was its treasurer. Therefore, Hanely remains the Committee's treasurer of record.

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1 timely. *Id.* Separately, Imus states that Fugatt "accurately reflects the reason for the late filing."

2 See Imus Response at 1.

3 After the Complaint and Responses in this matter were received, the Commission processed
4 two additional matters involving the Committee through the Administrative Fine ("AF") program.
5 In AF Case 2633, the Commission found reason to believe that the Committee failed to file its 2012
6 30-Day Post-General Report in violation of 2 U.S.C. § 434(a). The Commission approved a civil
7 penalty of \$990, which the Committee paid on March 22, 2013. See AF 2633 at 16 (notification
8 letter from Chair Weintraub to the Committee dated April 16, 2013). Subsequently, in AF Case
9 2712, the Commission found reason to believe that the Committee had failed to file its 2012 Year-
10 End Report in violation of 2 U.S.C. § 434(a). Although the Commission approved a civil penalty of
11 \$990, it ultimately determined to assess no civil penalty and close the file. The Commission
12 explained that it had revised the amount of the civil penalty to reflect the "actual level of activity
13 disclosed in the miscellaneous document"⁵ filed by Imus on May 2, 2013.⁶ See AF 2712 at 38
14 (notification letter from Chair Weintraub to the Committee dated July 1, 2013).

15 Pursuant to 2 U.S.C. § 434(a), treasurers of political committees are required to file financial
16 disclosure reports, and to do so timely. In particular, pre-primary election reports, such as the
17 Report at issue in this matter, are required to be complete as of the 20th day before the primary
18 election, and must be filed no later than 12 days before the primary election. See 2 U.S.C.

⁵ This document is the same Miscellaneous Report alluded to in footnote 4.

⁶ In the Miscellaneous Report, which Imus described as a "statement of non activity and no further committee," he stated that "after the last fine" (presumably the \$990 civil penalty paid in AF 2633), Fugatt assured him that "the final filings would be done" timely. Imus apologized because "this has not happened" as of yet and promised to follow up with Fugatt. Nonetheless, a review of the Committee's filings, as posted on the Commission's website, indicates that the last financial disclosure report filed by the Committee was its 2012 Pre-General Report, filed on October 26, 2012, and two 48-Hour Notices, filed on October 26, 2012 and November 3, 2012, respectively. The Commission has sent multiple RFAI notices to the Committee for its failure to file reports in 2013. See RFAs to Committee regarding its failure to file the following: 2013 April Quarterly Report, dated May 3, 2013; 2013 July Quarterly Report, dated August 2, 2013; 2013 October Quarterly, dated on November 1, 2013; and 2013 Year-End Report, dated on February 19, 2014.

1 § 434(a)(2)(A)(i). Here, the Committee acknowledges that its Pre-Primary Report, which was due
2 on May 24, 2012, was not filed until July 16, 2012. In addition, the record reflects that the
3 Committee has failed to file financial disclosure reports, including its 2012 30 Day Post-General
4 and Year-End Reports, and subsequent reports for 2013, in violation of 2 U.S.C. § 434(a), *see* n. 6.
5 However, the Committee paid a civil penalty in connection with its failure to file its Post-General
6 Report, and it appears that the Committee may now be inactive.

7 In light of the Committee's apparent lack of activity, and in furtherance of Commission
8 priorities, the Office of General Counsel recommends that the Commission exercise its
9 prosecutorial discretion and dismiss this matter as to Imus for Congress and Chad Hanely in his
10 official capacity as treasurer. *See Heckler v. Chaney*, 470 U.S. 821 (1985). The Office of General
11 Counsel also recommends that the Commission remind the Committee to take steps to comply with
12 the requirements of 2 U.S.C. § 434(a), which pertains to the filing of financial disclosure reports.
13 As the record does not reflect a violation by Imus, the Office of General Counsel also recommends
14 that the Commission find no reason to believe that candidate Gregg Imus violated the Act or
15 Commission regulations as to the allegations in this matter. Finally, the Office of General Counsel
16 recommends that the Commission approve the Factual and Legal Analysis and the appropriate
17 letters, and close the file.

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RECOMMENDATIONS


1. Dismiss MUR 6614 as to Imus for Congress and Chad Hanely in his official capacity as treasurer, pursuant to the Commission's prosecutorial discretion;
2. Remind Imus for Congress and Chad Hanely in his official capacity as treasurer of the requirements of 2 U.S.C. § 434(a), which pertain to the filing of financial disclosure reports;
3. Find no reason to believe that Gregg Imus violated the Federal Election Campaign Act of 1971 as amended, or Commission regulations;
4. Approve the attached Factual and Legal Analysis and the appropriate letters; and
5. Close the file.


General Counsel

5/1/14
Date

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